



## DEPARTMENT OF HOMELAND SECURITY

### Transportation Security Administration

#### Temporary Exemption of Certain Aircraft Operator Security Standards

**AGENCY:** Transportation Security Administration, DHS.

**ACTION:** Notice.

**SUMMARY:** In this Notice, TSA issues an exemption from the requirements to regulated domestic aircraft operators that comply with the measures described in the exemption. TSA determines it is in the public interest to minimize or eliminate duplicate criminal history records checks (CHRC) for individuals who work for multiple employers at an airport. All other provisions continue to apply to regulated aircraft operators, their employees, and their authorized representatives.

**DATES:** This exemption becomes effective on [INSERT DATE OF PUBLICATION IN THE *FEDERAL REGISTER*], and remains in effect until modified or rescinded by TSA through a notice published in the *Federal Register*.

**FOR FURTHER INFORMATION CONTACT:** Eric Byczynski, Airport Security Programs, Aviation Division, Policy, Plans, and Engagement; [eric.byczynski@tsa.dhs.gov](mailto:eric.byczynski@tsa.dhs.gov).

#### SUPPLEMENTARY INFORMATION:

##### Background

##### *Aviation Security*

TSA administers a comprehensive regulatory program governing aviation security, including standards for domestic airports, domestic aircraft operators, and foreign air carriers. The security requirements for domestic aircraft operators are codified at 49 CFR part 1544 and include minimum standards for (1) the protection of the aircraft and related facilities; (2) acceptance and screening of cargo; (3) use of law

enforcement personnel and the transport of Federal Air Marshals; (4) flight deck privileges; (5) training of individuals engaged in security functions; (6) carriage of accessible weapons; (7) access to cargo and cargo screening; (8) security threat assessments (STAs) and CHRCs; (9) airport-approved identification systems; and (10) the known shipper program. Also, in accordance with part 1544, aircraft operators must develop and follow TSA-approved security programs,<sup>1</sup> and comply with Security Directives issued by TSA.

The nature of aviation operations at commercial airports requires aircraft operators to share space and workers with other airlines. For instance, an aircraft may traverse several airports in a day, and the aircraft operator needs individuals at each airport to assist with typical operations, including aircraft movement, loading, and unloading; screening and accepting cargo or checked baggage for transport; or supervisory tasks related to these functions. The majority of these individuals work in the airport Security Identification Display Area (SIDA), but some may also work in the airport Sterile Area.<sup>2</sup> It is not economical or efficient for an aircraft operator to hire direct employees to work at all airports where it has flights, or for individuals to work only for that aircraft operator. The aircraft operator may have very few flights at an airport, and consequently employees would not have a full day's work if limited to working only for that aircraft operator. Some of the individuals who work in the SIDA for an aircraft operator may be full-time employees, but the vast majority are "authorized representatives" of multiple aircraft operators. An "authorized representative" is a person who is not a direct employee of the aircraft operator, but is authorized to carry out operational and regulatory functions, such as loading or unloading aircraft; or screening or accepting cargo and checked baggage on behalf of the aircraft operator. Authorized

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<sup>1</sup> See 49 CFR part 1544, Subpart B.

<sup>2</sup> See 49 CFR 1540.5 for definitions of SIDA and Sterile Area.

representatives are treated similarly to employees if a regulatory violation occurs: although the authorized representative performs the function, the aircraft operator remains responsible for completion of those functions. Thus, an individual who works in an airport SIDA often is an authorized representative for numerous commercial aircraft operators, and generally the aircraft operators are responsible for regulatory violations committed by the individual.

### *Vetting Requirements*

In accordance with the governing statute,<sup>3</sup> TSA's regulations require most individuals who work in aviation operations for an aircraft or airport operator to undergo a fingerprint-based CHRC. If the individual has a conviction for certain crimes within the preceding 10 years, the airport or aircraft operator must not give the individual unescorted access to the SIDA, and the aircraft operator must not permit the individual to perform certain covered functions, such as loading and unloading aircraft; screening or accepting cargo or checked baggage for transport on aircraft; or supervising these functions. These regulations also set out requirements for fingerprint application processing, fingerprinting fees, determining arrest status, correcting inaccurate criminal records, dissemination of criminal records, recordkeeping, continuing responsibilities of the individual, and aircraft operator duties.<sup>4</sup>

Workers who need unescorted access to SIDAs at airports, where aircraft are typically loaded and unloaded, must successfully complete a CHRC.<sup>5</sup> Individuals who work on behalf of aircraft operators to accept checked baggage and screen cargo are required to undergo a CHRC,<sup>6</sup> and aircraft operator flight crew members are required to complete a CHRC.<sup>7</sup> Some individuals who work in airport SIDAs for an aircraft operator

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<sup>3</sup> See 49 U.S.C. 44936.

<sup>4</sup> See 49 CFR 1544.229(c)-(m).

<sup>5</sup> See 49 CFR 1542.209.

<sup>6</sup> See 49 CFR 1544.229.

<sup>7</sup> See 49 CFR 1544.230.

or as an authorized representative of an aircraft operator are subject to duplicative requirements: 49 CFR § 1542.209 requires the airport operator to conduct a CHRC of all individuals seeking unescorted access to the SIDA, and 49 CFR § 1544.229 requires aircraft operators to conduct CHRCs of employees and authorized representatives who perform certain covered functions that may occur in airport SIDs. The regulations permit an aircraft operator to conduct a CHRC of a covered employee or authorized representative and provide the airport operator a letter certifying that the individual successfully completed the CHRC.<sup>8</sup> This process reduces the number of duplicate CHRCs the airport operator, aircraft operator, and individual must complete. However, airport operators are not required to accept these CHRC certifications from aircraft operators, and many airport operators favor conducting their own CHRCs even when the aircraft operator has conducted one.

Recent improvements by the Federal Bureau of Investigation (FBI) provide recurrent criminal history checks so that once an individual's fingerprints are submitted to the FBI, the transmitter receives any additional criminal history associated with those fingerprints that occurs after the initial report from the FBI. This program, known as Rap Back,<sup>9</sup> greatly improves the accuracy and effectiveness of criminal vetting and security. TSA invited airport operators and aircraft operators to volunteer to participate in the Rap Back program in 2018. Most airport operators and many aircraft operators volunteered to participate in Rap Back for their employees and authorized representatives who are required to undergo a CHRC. The airport operator or aircraft operator must 'subscribe' the individual's fingerprints in Rap Back when first submitting the fingerprints to the FBI. Once the fingerprints are subscribed, the airport- or aircraft operator will automatically receive information concerning new criminal activity associated with those

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<sup>8</sup> See 49 CFRa 1542.209(n).

<sup>9</sup> The full name of the program is the Record of Arrest and Prosecution Background.

fingerprints and the individual. The airport- or aircraft operator must continuously review these Rap Back notifications to determine whether the individual has committed a new disqualifying offense. If a disqualifying event occurs, the airport- or aircraft operator must revoke the individual's unescorted access to the SIDA and/or authorization to perform covered functions, such as the acceptance or screening of cargo or checked baggage. Through security program amendments, TSA is now requiring airport operators and aircraft operators to subscribe all individuals who undergo CHRCs into Rap Back.

As discussed above, workers who are granted unescorted access to SIDA by the airport operator and are also employed by or act as an authorized representative for several aircraft operators when conducting certain functions, are subject to multiple CHRCs and Rap Back subscriptions. TSA seeks to ensure that all individuals required to undergo a CHRC actually complete that CHRC and are subscribed to Rap Back. However, requiring all entities – the airport that issues the SIDA badge and the aircraft operators that employ or have an authorized representative relationship with the individual – to perform CHRCs is costly and unnecessary. Therefore, TSA is issuing this exemption to the CHRC and related requirements in 49 CFR § 1544.229, provided aircraft operators comply with the requirements of the exemption that will ensure accountability for full CHRC and Rap Back coverage.

### **Authority and Determination**

TSA may grant an exemption from a regulation if TSA determines that the exemption is in the public interest.<sup>10</sup> TSA finds this exemption to be in the public interest because it minimizes or eliminates redundant CHRCs and Rap Back subscriptions for certain workers at regulated airports, who work for multiple employers. TSA has determined that there is no risk to transportation security associated with this exemption

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<sup>10</sup> 49 U.S.C. 114(q).

because it provides an option to eliminate only duplicative, redundant security requirements.

## **Exemption**

1. *Eligibility.* The exemption applies only where the following criteria exist:

- The individual works at an airport with a SIDA, as prescribed in 49 CFR § 1542.103(a) or § 1542.103(b) with SIDA;
- The individual's duties include accepting checked baggage for transport, as prescribed in 49 CFR § 1544.229(a)(3)(ii); screening or supervising the screening of cargo as prescribed in 49 CFR § 1544.229(a)(3)(i); screening cargo as prescribed in 49 CFR § 1544.229(a)(1)(iii)(C); and/or supervising the screening of cargo as prescribed 49 CFR § 1544.229(a)(1)(iii)(B);
- The individual must have unescorted access to a SIDA or Sterile Area and possess an airport operator-issued SIDA and/or Sterile Area ID media, as prescribed in 49 CFR § 1542.209 or SD 1542-04-08 series;
- The individual is not the subject of a CHRC certification as set forth in 49 CFR § 1544.229(a)(1)(i); and
- The individual does not possess a CREW/RAMP/EXCLUSIVE aircraft operator-issued SIDA ID media as set forth in 49 CFR § 1544.229(a)(1)(ii).

2. *Exemption.* For the duration of this exemption, an aircraft operator is not required to conduct a CHRC, Rap Back subscription, or comply with the related requirements in 49 CFR § 1544.229(c)-(m) for the individuals who meet the eligibility criteria.

3. *Duration.* This exemption takes effect on [INSERT DATE OF PUBLICATION IN THE *FEDERAL REGISTER*] and remains in effect until modified or rescinded by TSA through a notice published in the *Federal Register*.

Dated: September 23, 2021.

David Pekoske,

*Administrator.*

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